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AUTHOR Andrews, Hans A.
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ABSTRACT

With faculty negotiations becoming legal in more states, it is not uncommon to find faculty groups wanting to include the faculty evaluation system as an item to be negotiated. While some courts suggest that negotiating evaluation is against public policy, it is, nevertheless, being negotiated in a significant number of contracts. In 1991, a survey was conducted of instructional deans and/or vice presidents in the North Central United States to determine whether the inclusion of faculty evaluation systems in faculty negotiations impaired effective evaluation practices. Of 353 deans/vice presidents surveyed, 283 responded, for a response rate of 80%. Of the 87 colleges reporting negotiated evaluation systems in faculty contracts, 37 (42.5%) were dissatisfied with the language that had been negotiated into the faculty contract. Comments from administrators who were not satisfied centered on four areas: (1) restrictions that the language imposed on their role as administrators with responsibilities for evaluation; (2) the poor language written into the contract; (3) deficiencies in criteria procedures; and (4) concerns relative to student evaluation. In addition to these comments, administrators were asked to submit copies of contract pages with language relating to evaluation. In several contracts, faculty had created negotiation procedures and criteria that made it most difficult to evaluate continuing (tenured) faculty. In some instances, the administration was given no significant role in the process, while in others the administrative supervisor was called upon only when a problem was serious. (Author/JMC)

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Negative Impact of Faculty Contract Negotiations on Community College Faculty Evaluation Systems

A RESEARCH STUDY
BY
DR. HANS A. ANDREWS
DEAN OF INSTRUCTION
ILLINOIS VALLEY COMMUNITY COLLEGE
OGLESBY, IL 61348

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Arizona, Arkansas,
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Michigan, Minnesota,
Missouri, Nebraska,
New Mexico, North Dakota,
Ohio, Oklahoma,
South Dakota,
West Virginia, Wisconsin,
and Wyoming

Negative Impact of Faculty Contract Negotiations on Community College Faculty Evaluation Systems

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Written by:

Dr. Hans A. Andrews
Dean of Instruction
Illinois Valley Community College
2578 E. 350th Road
Oglesby, Illinois 61348

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ABSTRACT

Negative Impact of
Faculty Contract Negotiations on
Community College Faculty Evaluation Systems

With the advent of faculty negotiations becoming legal in more states it is not uncommon to find faculty groups wanting to include the faculty evaluation system as an item to be negotiated with the governing board. While some courts suggest that negotiating evaluation is against public policy, it is, nevertheless, being negotiated in a significant number of contracts. Faculty members are sometimes able to draw away power from boards and administrators. This study identifies a number of those colleges within a 19-state North Central region of the United States. Administrators identify the problems such evaluation has, in fact, created in thwarting effective evaluation practices.

Negative Impact of Faculty Contract Negotiations on Community College Faculty Evaluation Systems

Does the advent of faculty contract negotiations draw away the legal and public rights and responsibilities of community college administrators and boards of trustees as they apply to faculty evaluation? Are administrators in these colleges hindered as a result of the language on evaluation that gets negotiated into the contracts? These were key questions to be answered by instructional administrators in colleges where faculty evaluation language has been negotiated between faculty and governing boards.

Background

Cohen and Brawer (1982) identified ways that faculty groups made evaluation plans more complex as they gained more power and broke away from their colleagues in the lower schools. They pointed out that both peer and student evaluation models were added primarily through faculty input. Their research further showed faculty bargaining units leaning considerably more in the direction of protecting their members than toward enhancing professional performance (p. 7). Such pressures do, indeed, strain higher education's ability to police itself and to rid itself of weak and incompetent colleagues.

A review of court tested cases show that some courts have supported the legal role of boards in assuring quality instruction. Piele (1979) presented the case study results of

Foleno v. Board of Education of the Township of Bedminister. The court was quoted as saying, "The board has the duty, in furnishing a thorough and efficient education, to evaluate the performances of its employees and to staff its classrooms with skillful and effective teachers" (p.11). Piele presented a second court decision making clear that it did not agree with evaluation criteria being negotiated into a faculty contract (p. 147):

> Nevertheless, negotiation of evaluative criteria is against public policy because retention or promotion of teachers is a management prerogative.

Andrews (1985) found that in a sampling of colleges throughout the country, a number of two-year colleges had, indeed, started allowing evaluation practices to become part of the negotiated faculty contract.

In his later research Piele (1981) concluded that in many states delegation of hiring or firing of teachers or other employees is not permissible. In such states he found it clear that boards hire and boards fire as required by law.

Orze (1977) found that what can be negotiated into faculty contracts is often not clearly defined. He pointed out how ambiguous legislation has been regarding provisions to be negotiated. He went on to state, "legal powers of the union extend only to the mandatory subjects for collective bargaining that the administration must negotiate with it." He further dealt with the fact that administrators are often at fault for what is <u>given away</u> to unionized faculty by going beyond mandatory

subjects in their negotiations (emphasis added):

> The union has no legal right to bargain for authority beyond those mandatory subjects. Whatever additional powers the union may gain at the bargaining table can only be achieved if the administration is willing to share one or more of its managerial rights with the union (pp. 507-508).

There have been some courts that have not seen faculty negotiation of evaluation criteria as a threat to public policy. The North Dakota and Indiana Supreme Courts are two courts that saw teacher evaluation policies as permissible in negotiations between boards and teachers. The Indiana Supreme Court saw evaluation as a definite influence in "working conditions" which is a mandatory subject for bargaining.

Evaluation Criteria and Procedures Negotiated Into Contracts

This present study presents information received from a 19 state survey sent out to 353 instructional deans and/or vice presidents for instruction in the North Central region during 1991. A total of 283 responses were received for an 80% return which was very high. Out of these returns there were 87 instructional leaders who related that their college did have evaluation criteria or procedures negotiated into their faculty contracts.

It was found that there were no colleges in 11 of the 19

states reporting evaluation practices being negotiated into faculty contracts during the collective bargaining process. It is assumed that collective bargaining legislation is non-existent in most of these 11 states. Evaluation processes in the other eight states found some colleges negotiated evaluation systems while others did not. A total of 87 colleges reported negotiated criteria and 45 in the same eight states reported evaluation criteria as not being part of a negotiation process.

Fifty (50) of these 87 returns said "yes" to the question of whether they were satisfied with the contract language. There were 37 responses who said "no," they were not satisfied with the language that had been negotiated into the faculty contract. It is these "no" responses that were analyzed in this study.

Table I About Here

AREAS OF DISSATISFACTION

The comments from administrators who were dissatisfied centered on four areas: (1) restrictions that the language imposed on their role as administrators with responsibilities for evaluation and; (2) the poor language written into the contract; (3) deficiencies in criteria procedures and; (4) concerns relative to student evaluation. The frequency of comments submitted by administrators not satisfied with negotiated evaluation systems are summarized in Table II.

Table II About Here

The following written responses were elicited and help highlight the specific concerns with contract language that administrators feel:

1. Restrictions Imposed on Administrators
   - A. Tenured teachers are no longer evaluated by administrators;
   - B. The system is now too confining; more avenues for evaluation are needed;
   - C. Department chairpersons are not allowed sufficient responsibility;
   - D. There is not enough (language) regarding supervisory evaluation;
   - E. It is now faculty controlled. Administrators are only used when a bonafide problem has been acknowledged;
   - F. The system does not include tenured faculty;
   - G. Evaluation needs to be more frequent;
   - H. Division chairs should be involved as they are closest to faculty;
   - I. The language is too restrictive and not really formative.

2. Poor or Incomplete Language in Contract
   - A. A new process needs to be developed to deal with the board of governors pay for performance policy;
   - B. The language is too general;
   - C. Language introduced is procedural and opens the door to potential changes that could weaken its effectiveness;
   - D. Language includes criteria but is accepted as not all conclusive;
   - E. A plan of action is not clear enough;
   - F. We have outdated criteria;
   - G. The language needs to be updated and enhanced;
   - H. Language is not sufficiently inclusive;
   - I. Contract simply provides that there will be evaluation but there are no specifics as to how this is to be done;
   - J. The language is too loosely structured;
   - K. Compliance or frequency is not defined.
3. Deficiencies in Criteria and Procedures
   - A. No provision for improvement of instruction;
   - B. Not precise enough;
   - C. It doesn't focus on curriculum outcomes;
   - D. The system identifies strengths and concerns but does not provide for rewards or corrections;
   - E. No specifics, no consequences;
   - F. Does not take into account the individual's goals;
   - G. Plans of action not clear enough.

4. Student Evaluation Concerns

   A. Student evaluations are outside the "official" evaluation process;

   B. Teachers are no longer compelled to use the student evaluation forms. They do their own;

   C. Student evaluations are not done regularly;

   D. Contract prohibits use of student and peer evaluations.

Samples of Ineffective Contract Language Clauses

Respondents to the survey were asked to submit copies of the contract pages with the language relating to evaluation. The concerns outlined above become clearer when one looks at the following language excerpts from the contracts of those respondents who were dissatisfied with the contract language restrictions.

An Iowa community college places the process in a personnel officer's office:

> The administration of all instruments is to be done under the direction of the Personnel Officer.

The process includes student, peer, self, and administrative evaluation each year. Faculty are given exact dates and times for each evaluation process. Administrative evaluation by the immediate supervisor appears to be a conference to review all aspects of the other evaluation process. There is no reference to in-classroom visitation. The process looks very detailed and unwieldy to administer. The responding administrator felt the negotiated process was a hindrance and said "it slows the

process and makes changes difficult." A complicated process as outlined here is what Cohen and Brawer refer to in their discussion of how evaluation procedures have become more complex and gaining "labyrinthime complexity" (p. 25).

In one Michigan college the contract is written to let the faculty member decide if he or she wishes to have supervisor evaluation. In a second Michigan college the administrator wrote about concerns that the evaluation criteria was "too outdated and too restrictive and requires too much time to meet all the objectives." The contract states that "the criteria and instruments of evaluation will be developed jointly between the Faculty Senate and the administration."

The negotiated process in another Michigan college renders supervisory evaluation as almost non-existent except at a time the "department recognizes areas of deficiency." In this case a request of evaluation by the immediate supervisors must be made by no later than January 1. It is made clear, however, that "such a request shall not become a part of the faculty member's personnel file, nor shall it serve as cause for dismissal." It goes on to state "evaluation shall not be used to harass continuing contract employees" and "the immediate supervisor shall have the exclusive right to make such evaluation." The respondent in this college stated a dissatisfaction with the lack of language regarding supervisory evaluation.

The process in a fourth Michigan college relative to continuing contract faculty makes it clear that any review documents produced through review by his/her department "are the

property of the reviewed faculty member, and such documents or copies shall not be kept by the department members involved in the review, or become a permanent part of the faculty member's record without the faculty member's permission." The administrative respondent at this college stated that such language "restricts my ability to discipline and/or correct faculty problems in a reasonable time frame (one year)." The respondent also saw it as "restricting the evaluation of problem faculty". He/she felt administrative or peer review should be required.

A branch campus respondent of the previous college sees the process as "faculty controlled." The same evaluation process exists at both campuses. Presently an administrative evaluation only occurs when a "bonafide problem has been acknowledged." The respondent believes "supervisory evaluations (routine) should be included along with the disciplinary evaluation already in place."

The dean at a large metropolitan college sent contract pages that restrict faculty evaluation to student review. She stated her frustration on not being able to visit a classroom unless invited (emphasis added). She added that administrative classroom evaluation should be required.

The academic dean in a Minnesota college submitted the contract evaluation plan showing that the dean (administrative) and student evaluation are both included in the procedure. Individual employee development plans need to be developed as a result of input received. The dean listed concerns to be the

"lengthy process for full-time faculty" and "no peer (instructor or chairperson) evaluation."

A Wisconsin college contract requires student evaluation but does not make it a requirement for supervisory evaluation. The vice president for instructional services stated it was a very unsatisfactory condition with the present system but a movement was underway to improve upon it.

Summary

This study was designed to solicit responses from two-year college instructional leaders (administration) on what is happening to faculty evaluation at those colleges. The focus was on college faculty contracts that have had evaluation criteria and procedural negotiated into the faculty contract but had proven to be unsatisfactory to the instructional administrators needing to administer the evaluation system.

The data collected found 37 (42.5%) of the 87 colleges reporting negotiated evaluation systems in faculty contracts to be dissatisfied with such contract language. They further saw the language hindering them in the evaluation process. The language in these 37 contracts was found to restrict administrators in carrying out effective evaluation, poorly written provisions and deficiencies in terms of evaluation criteria, procedures, and/or overemphasize student evaluation to the restriction or exclusion of peer and/or administrative evaluation importance. This part of the study did not focus on those 50 respondents who did not indicate dissatisfaction with their contract language.

In several contracts it was evident that faculty had created negotiation procedures and criteria that made it most difficult to evaluate continuing (tenured) faculty. In some instances the administration was given no significant role in the process. In others the administrative supervisor was only brought into the picture when an obvious problem was serious.

In these negotiated evaluation systems it is difficult to find any redeeming value in the public interest. It is in the public interest when boards and administrators maintain management prerogatives in determining if an instructor is competent enough to be retained, promoted, or tenured.

Strong faculty unions are sometimes able to wrestle away these prerogatives from boards and set up criteria and procedures that do more to protect their membership then to lead to improvement of quality in the classroom.

This study listed some of the specific language clauses that are bothersome and lead to ineffective evaluation within institutions. Both boards of trustees and serious faculty leaders can work to develop language in faculty contracts that guarantee effective evaluation. Both groups as well as students and the general public all gain when a quality evaluation system is put in place.

This study should not be read to imply that evaluation practices are worse in faculty negotiated contracts than they are in non-negotiated faculty evaluation systems. Evaluation criteria and procedures in the two-year college system in the process of evolving in many colleges as a means of assuring

quality improvements in instruction. There are, therefore, many evaluation systems in need of improvements whether negotiated or developed outside of the negotiation process.

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Table I.

Instructional Leaders Responses to

Evaluation Systems Negotiated

into Faculty Contracts

N = 87

	Yes	No
1. Are you satisfied with the negotiated contract language?	50	37
2. Has evaluation, in your opinion, been hindered for you as a supervisor since the language is negotiated?	23	64

Table II.

Unsatisfactory or Incomplete Language

Negotiated Into Faculty Contracts

Categories of Written Responses by Instructional Leaders

		Number of Responses
1.	Restrictions Imposed on Administrators. . . .	9
2.	Poor or Incomplete Language in Content. . . .	11
3.	Deficiencies in Criteria and Procedures. . .	8
4.	Student Evaluation Concerns.	4
	Total Written Responses.	32

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